

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD L. McCLUSKEY, individually and) Case No. C09-0449RSM
on behalf of all other similarly situated persons,)
and on behalf of the RED DOT) STIPULATION AND ORDER
CORPORATION EMPLOYEE STOCK) REGARDING CLASS CERTIFICATION
OWNERSHIP PLAN,) MOTION
)
Plaintiff,)
)
v.)
)
TRUSTEES OF RED DOT CORPORATION)
EMPLOYEE STOCK OWNERSHIP PLAN)
AND TRUST; R. BRUCE CHANNER; RICK)
BOMAN; GARY HANSEN; CHRYSTAL)
HARVEY; JESSE SMITH;)
ADMINISTRATIVE COMMITTEE OF RED)
DOT CORPORATION EMPLOYEE STOCK)
OWNERSHIP PLAN AND TRUST; and RED)
DOT CORPORATION EMPLOYEE STOCK)
OWNERSHIP PLAN,)
)
Defendants.)
)
)

A. Stipulation

As stated in the parties' earlier stipulation and proposed order regarding class certification briefing (Dkt. 20), following Plaintiff's timely filing of his motion for class

1 certification on October 15, 2009, the parties became aware that new information could
2 affect the litigation and Plaintiff's pending motion for class certification. In accordance with
3 that stipulation, on November 10, 2009 the Court ordered the requested extension of the
4 class certification briefing schedule to allow the parties to address and reevaluate their
5 positions in light of the new information. (Dkt. 21.) As requested by the parties, the Court's
6 order was without prejudice to (1) a potential motion by plaintiff to amend his complaint, or
7 refile an amended motion for class certification, or (2) any opposition by Defendants to such
8 potential motions. (*Id.*)
9

10 The new information concerned a Plan Amendment and a distribution policy
11 adopted on or about November 6, 2009 regarding the Defendant Red Dot Employee Stock
12 Ownership Plan ("Plan"); the Plan Amendment and distribution policy both directly relate to
13 the allegations in this action concerning the Plan and the pending motion for class
14 certification.
15

16 During the period for review and reevaluation granted by the Court to address the
17 new information, the parties have agreed that in order to properly address the new
18 information affecting the litigation and class certification issues, Plaintiff's motion for class
19 certification should be withdrawn, with an opportunity to file a new motion for class
20 certification. The parties therefore stipulate that the pending motion for class certification
21 (Dkt. 14) be withdrawn, and that the case schedule be amended to allow Plaintiff to file a
22 new motion for class certification by December 17, 2009, with such motion to be noted for
23 January 15, 2010 and Defendants' response to that motion to be filed by January 8, 2010.
24
25
26

1 Respectfully submitted this 20th day of November, 2009.

2 SIRIANNI YOUTZ MEIER &
3 SPOONEMORE

4 By: s/ Richard E. Spoonemore
5 Richard E. Spoonemore, WSBA #21833
6 719 Second Avenue, Suite 1100
7 Seattle, WA 98104
8 Phone: (206) 223-0303
9 Fax: (206) 223-0246
10 Email: rspoonemore@sylaw.com

11 Attorneys for Plaintiff Richard McCluskey

12 SONG MONDRESS PLLC

13 By: s/ Michael P. Monaco
14 Michael P. Monaco, WSBA No. 24460
15 720 Third Avenue, Suite 1500
16 Seattle, WA 98104
17 Phone: (206) 398-1500
18 Fax: (206) 398-1501
19 Email: mmonaco@songmondress.com

20 Attorneys for Defendants

21 **B. Order**

22 It is so Ordered. In accordance with the above stipulation, the pending motion for
23 class certification in this action (Dkt. 14) is withdrawn. The case schedule is amended to
24 allow a new motion for class certification to be filed by December 17, 2009; any such
25 motion shall be noted for January 15, 2010, and Defendants' response thereto to shall be
26 filed by January 8, 2010.

Dated this 1 day of December 2009.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE